

JIVIKA CANDAPPA (SBN225919)
Law office of Jivaka Candappa
46 Shattuck Square, Suite 15
Berkeley, California 94704
Telephone: (510) 981-1808
Facsimile: (510) 981-1817

Attorney for Plaintiff KEVIN WALKER

MICHAEL S. LAWSON (SBN 048172)
City Attorney
RANDOLPH S. HOM (SBN 152833)
Assistant City Attorney
CITY OF HAYWARD
777 B Street
Hayward, California 94541
Telephone: (510) 583-4450
Facsimile: (510) 583-3660

Attorneys for Defendants CITY OF
HAYWARD, ART THOMS, SCOTT
LUNGER, AND ZACHARY HOYER

JAMES G. MURRAY (SBN 120049)
Prindle, Decker, and Amaro, LLP
310 Golden Shore, Fourth Floor
P.O. Box 22711
Long Beach, California 90801-5511
Telephone: (562) 436-3946
Facsimile: (562) 495-0564

Attorneys for Defendants AMERICAN
DISCOUNT SECURITY AND DAUD
WARDAK

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KEVIN WALKER, Plaintiff,

v.

CITY OF HAYWARD, et al., Defendants.

Case No. C 07 06205 (TEH)

STIPULATION FOR PROTECTION OF
DOCUMENTS AND ~~PROPOSED~~
PROTECTIVE ORDER: PLAINTIFF'S
MEDICAL AND PSYCHOLOGICAL
RECORDS

Plaintiff Kevin Walker, and Defendants City of Hayward, Officer Art Thoms, Officer
Scott Lungert, Officer Zachary Hoyer, American Discount Security, and Daud Wardak through
their respective attorneys of record, stipulate to the following order:

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential,
proprietary, or private information for which special protection from public disclosure and from
use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the
parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order.

1 The parties acknowledge that this Order does not confer blanket protections on all disclosures or
2 responses to discovery and that the protection it affords extends only to the limited information or
3 items that are entitled under the applicable legal principles to treatment as confidential. The
4 parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order
5 creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth
6 the procedures that must be followed and reflects the standards that will be applied when a party
7 seeks permission from the court to file material under seal.

8 2. DEFINITIONS

9 2.1 Party: any party to this action, including all of its officers, directors,
10 employees, consultants, retained experts, and outside counsel (and their support staff).

11 2.2 Disclosure or Discovery Material: all items or information, regardless of the
12 medium or manner generated, stored, or maintained (including, among other things, testimony,
13 transcripts, or tangible things) that are produced or generated in disclosures or responses to
14 discovery in this matter.

15 2.3 “Confidential” Information or Items: information (regardless of how generated,
16 stored, maintained, or whether or not marked as “CONFIDENTIAL” at the time of production to
17 Plaintiff and Defendants) or tangible things that qualify for protection under standards developed
18 under F.R.Civ.P. 26(c). This material includes but is not limited to the following categories of
19 documents: documents relating to plaintiff Kevin Walker’s medical records and psychological
20 records including but not limited to admission records, vital signs, medical examination,
21 diagnosis, diagnostic tests, X-rays, lab work, prognosis, medical treatment, psychological
22 treatment, counseling, history, reports, notes, diagrams, instructions, physical therapy, discharge
23 records, prescriptions, insurance, and medical bills from any medical facility including but not
24 limited to St. Rose Hospital, Eden Hospital, San Leandro Hospital, Alameda County Medical
25 Center, and Highland Hospital.

26 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items:
27 extremely sensitive “Confidential Information or Items” whose disclosure to another Party or
28 nonparty would create a substantial risk of serious injury that could not be avoided by less

1 restrictive means.

2 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a
3 Producing Party.

4 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
5 Material in this action.

6 2.7. Designating Party: a Party or non-party that designates information or items
7 that it produces in disclosures or in responses to discovery as “Confidential” or “Highly
8 Confidential — Attorneys’ Eyes Only.”

9 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
10 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

11 2.9. Outside Counsel: attorneys who are not employees of a Party but who are
12 retained to represent or advise a Party in this action.

13 2.10 House Counsel: attorneys who are employees of a Party.

14 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as
15 their support staffs).

16 2.12 Expert: a person with specialized knowledge or experience in a matter
17 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
18 witness or as a consultant in this action and who is not a past or a current employee of a Party or
19 of a competitor of a Party’s and who, at the time of retention, is not anticipated to become an
20 employee of a Party or a competitor of a Party’s. This definition includes a professional jury or
21 trial consultant retained in connection with this litigation. It also includes any of plaintiff Kevin
22 Walker’s treating physicians, psychiatrists, psychologists, counselors or other medical staff related
23 to Walker’s treatment or visit at a medical facility.

24 2.13 Professional Vendors: persons or entities that provide litigation support
25 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
26 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
27 subcontractors.

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1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only Protected Material (as
3 defined above), but also any information copied or extracted therefrom, as well as all copies,
4 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
5 parties or counsel to or in court or in other settings that might reveal Protected Material.

6 4. DURATION

7 Even after the termination of this litigation, the confidentiality obligations imposed by this Order
8 shall remain in effect until a Designating Party agrees otherwise in writing or a court order
9 otherwise directs.

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
12 or non-party that designates information or items for protection under this Order must take care to
13 limit any such designation to specific material that qualifies under the appropriate standards. A
14 Designating Party must take care to designate for protection only those parts of material,
15 documents, items, or oral or written communications that qualify – so that other portions of the
16 material, documents, items, or communications for which protection is not warranted are not
17 swept unjustifiably within the ambit of this Order. Mass, indiscriminate, or routinized
18 designations are prohibited. Designations that are shown to be clearly unjustified, or that have
19 been made for an improper purpose (e.g., to unnecessarily encumber or retard the case
20 development process, or to impose unnecessary expenses and burdens on other parties), expose
21 the Designating Party to sanctions. If it comes to a Party's or a non-party's attention that
22 information or items that it designated for protection do not qualify for protection at all, or do not
23 qualify for the level of protection initially asserted, that Party or non-party must promptly notify
24 all other parties that it is withdrawing the mistaken designation.

25 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
26 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
27 material that qualifies for protection under this Order must be clearly so designated before the
28 material is disclosed or produced.

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (apart from transcripts of depositions
3 or other pretrial or trial proceedings), that the Producing Party affix the legend
4 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” at the top
5 of each page that contains protected material. If only a portion or portions of the material on a
6 page qualifies for protection, the Producing Party also must clearly identify the protected
7 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
8 portion, the level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

10 A Party or non-party that makes original documents or materials available for
11 inspection need not designate them for protection until after the inspecting Party has indicated
12 which material it would like copied and produced. During the inspection and before the
13 designation, all of the material made available for inspection shall be deemed “HIGHLY
14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

15 (b) for testimony given in deposition or in other pretrial or trial proceedings,
16 that the Party or non-party offering or sponsoring the testimony identify on the record, before the
17 close of the deposition, hearing, or other proceeding, all protected testimony, and further specify
18 any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’
19 EYES ONLY.” When it is impractical to identify separately each portion of testimony that is
20 entitled to protection, and when it appears that substantial portions of the testimony may qualify
21 for protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on
22 the record (before the deposition or proceeding is concluded) a right to have up to 20 days to
23 identify the specific portions of the testimony as to which protection is sought and to specify the
24 level of protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
25 ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are appropriately
26 designated for protection within the days shall be covered by the provisions of this Stipulated
27 Protective Order. Transcript pages containing Protected Material must be separately bound by the
28 court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or

1 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or
2 nonparty offering or sponsoring the witness or presenting the testimony.

3 (c) for information produced in some form other than documentary, and for
4 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the
5 container or containers in which the information or item is stored the legend “CONFIDENTIAL”
6 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the
7 information or item warrant protection, the Producing Party, to the extent practicable, shall
8 identify the protected portions, specifying whether they qualify as “Confidential” or as “Highly
9 Confidential – Attorneys’ Eyes Only.”

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
11 designate qualified information or items as “Confidential” or “Highly Confidential – Attorneys’
12 Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection
13 under this Order for such material. If material is appropriately designated as “Confidential” or
14 “Highly Confidential – Attorneys’ Eyes Only” after the material was initially produced, the
15 Receiving Party, on timely notification of the designation, must make reasonable efforts to assure
16 that the material is treated in accordance with the provisions of this Order.

17 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

18 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
19 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
20 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
21 waive its right to challenge a confidentiality designation by electing not to mount a challenge
22 promptly after the original designation is disclosed.

23 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
24 Party’s confidentiality designation must do so in good faith and must begin the process by
25 conferring directly with counsel for the Designating Party. In conferring, the challenging Party
26 must explain the basis for its belief that the confidentiality designation was not proper and must
27 give the Designating Party an opportunity to review the designated material, to reconsider the
28 circumstances, and, if no change in designation is offered, to explain the basis for the chosen

1 designation. A challenging Party may proceed to the next stage of the challenge process only if it
2 has engaged in this meet and confer process first.

3 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
4 designation after considering the justification offered by the Designating Party may file and serve
5 a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)
6 that identifies the challenged material and sets forth in detail the basis for the challenge. Each
7 such motion must be accompanied by a competent declaration that affirms that the movant has
8 complied with the meet and confer requirements imposed in the preceding paragraph and that sets
9 forth with specificity the justification for the confidentiality designation that was given by the
10 Designating Party in the meet and confer dialogue. The burden of persuasion in any such
11 challenge proceeding shall be on the Designating Party. Until the court rules on the challenge, all
12 parties shall continue to afford the material in question the level of protection to which it is
13 entitled under the Producing Party's designation.

14 7. ACCESS TO AND USE OF PROTECTED MATERIAL

15 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
16 or produced by another Party or by a non-party in connection with this case only for prosecuting,
17 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
18 the categories of persons and under the conditions described in this Order. When the litigation has
19 been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL
20 DISPOSITION). Protected Material must be stored and maintained by a Receiving Party at a
21 location and in a secure manner that ensures that access is limited to the persons authorized under
22 this Order.

23 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
24 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
25 disclose any information or item designated CONFIDENTIAL only to:
26 (a) the Receiving Party's Counsel of record in this action, as well as
27 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
28 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached

hereto as Exhibit A;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(c) experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order. In the event the parties cannot agree upon whether disclosure is “reasonably necessary” said parties shall meet and confer on the matter and if there is no resolution may seek relief from the Court;

(g) the author of the document or the original source of the information and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A).

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

(a) the Receiving Party’s Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and who have signed the “Agreement to Be Bound by Protective Order” that is attached hereto as Exhibit A;

1 (b) experts (as defined in this Order) (1) to whom disclosure is reasonably
2 necessary for this litigation, (2) who have signed the “Agreement to Be Bound by Protective
3 Order” (Exhibit A);

4 (c) the Court and its personnel;

5 (d) court reporters, their staffs, and professional vendors to whom disclosure is
6 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
7 Protective Order” (Exhibit A); and

8 (e) the author of the document or the original source of the information;

9 (f) during their depositions, witnesses in the action to whom disclosure is
10 reasonably necessary and who have signed the “Agreement to be Bound by Protective Order”.

11 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material
12 must be separately bound by the court reporter and may not be disclosed to anyone except as
13 permitted under this Stipulated Protective Order. In the event the parties cannot agree upon
14 whether disclosure is “reasonably necessary” said parties shall meet and confer on the matter and
15 if there is no resolution may seek relief from the Court.

16 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
17 LITIGATION.

18 If a Receiving Party is served with a subpoena or an order issued in other litigation
19 that would compel disclosure of any information or items designated in this action as
20 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the
21 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately
22 and in no event more than three court days after receiving the subpoena or order. Such notification
23 must include a copy of the subpoena or court order.

24 The Receiving Party also must immediately inform in writing the Party who caused the
25 subpoena or order to issue in the other litigation that some or all the material covered by the
26 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
27 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
28 caused the subpoena or order to issue.

1 The purpose of imposing these duties is to alert the interested parties to the existence
2 of this Protective Order and to afford the Designating Party in this case an opportunity to try to
3 protect its confidentiality interests in the court from which the subpoena or order issued. The
4 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its
5 confidential material – and nothing in these provisions should be construed as authorizing or
6 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

7 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

8 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
9 Material to any person or in any circumstance not authorized under this Stipulated Protective
10 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
11 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)
12 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
13 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to
14 Be Bound” that is attached hereto as Exhibit A.

15 10. FILING PROTECTED MATERIAL. Without written permission from the Designating
16 Party or a court order secured after appropriate notice to all interested persons, a Party may not file
17 in the public record in this action any Protected Material. A Party that seeks to file under seal any
18 Protected Material must comply with Civil Local Rule 79-5.

19 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the
20 Producing Party, within sixty days after the final termination of this action defined as the
21 dismissal or entry of judgment by the district court, or if an appeal is filed, the disposition of the
22 appeal, each Receiving Party must return all Protected Material to the Producing Party. As used in
23 this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries
24 or any other form of reproducing or capturing any of the Protected Material. With permission in
25 writing from the Designating Party, the Receiving Party may destroy some or all of the Protected
26 Material instead of returning it. Whether the Protected Material is returned or destroyed, the
27 Receiving Party must submit a written certification to the Producing Party (and, if not the same
28 person or entity, to the Designating Party) by the sixty day deadline that identifies (by category,

where appropriate) all the Protected Material that was returned or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: October 29, 2008 /s/ Jivaka Candappa
Attorneys for Plaintiff Kevin Walker

DATED: October 29, 2008 /s/ Randolph S. Hom
Attorneys for Defendants City of Hayward,
Art Thoms, Scott Lunger, and Zachary Hoyer

DATED: October 29, 2008 /s/ James Murray
Attorney for Defendants American Discount
Security and Daud Wardak

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 11/06/08 The Honorable Thelton E. Henderson
United States District Judge



EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of Kevin Walker v. City of Hayward, et al. United States District Court Case No. C07 06205 (TEH). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

[printed name]

Signature: _____

[signature]